

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("this Agreement"), entered into by and between the Office of the Attorney General (hereinafter the "State") and **James Joven** (hereinafter the "Contractor") is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor. The Contractor shall provide the services more specifically described in Exhibit A, attached hereto and incorporated herein by reference. The Contractor shall execute his responsibilities by following and applying the highest professional standards.

2. Consideration. The Contractor shall be paid at the rate of ten thousand dollars (\$10,000.00) per month for performing the duties described in Exhibit A. Total remuneration under this Agreement shall not exceed thirty thousand dollars (\$30,000.00). The Contractor shall submit monthly invoices to the State showing with particularity the date and description of the services rendered. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

3. Term. This Agreement is for a period beginning on February 15, 2006 and ending on May 15, 2006. It may be renewed for one (1) additional three (3) month term by agreement of the parties.

4. Access to Files and Records. The State shall have full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement. Upon termination or expiration of this Agreement, the Contractor shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. The Contractor acknowledges that he may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at his offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment. The Contractor shall not assign any part of the services to be performed under this Agreement to a third party.

6. Changes in Work. The Contractor shall not change scope of the services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the Contractor to determine whether the provisions of this Agreement require formal modification.

B. The Contractor shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Contractor violates any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately

upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Contractor certifies by entering into this Agreement, that neither he nor his principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in his payments and has submitted proof of such payment to the State.

D. The Contractor warrants that he has no pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that he will immediately notify the State of any such actions.

E. The Contractor warrants that he shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State.

F. The Contractor affirms that he is properly registered and owes no outstanding reports with the Indiana Secretary of State.

G. The Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that State may bar the Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Contractor is current in his payments on his liability to the State and has submitted proof of such payment to the State.

H. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

8. Conflict of Interest.

A. The Contractor represents and warrants that, after due and diligent inquiry, he is satisfied that he has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude him from providing the services.

B. The Contractor represents and warrants that he has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. The Contractor certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, the Contractor shall provide the State with an opinion by the State Ethics Commission indicating that the

existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

9. Drug-Free Workplace. As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Contractor certifies and agrees that he will provide a drug-free workplace by:

A. Publishing and providing to all of his employees a statement notifying his employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform his employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

10. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

11. Governing Laws. This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

12. Independent Contractor. The Contractor and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. The Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for his employees.

13. Key Person. The parties agree and acknowledge that James Joven is a key person to this Agreement, and that all duties and deliverables rendered pursuant to this Agreement shall be performed by James Joven.

14. Nondiscrimination. As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, the Contractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

A. Notice to the State shall be sent to:

Gregory F. Zoeller, Chief Deputy
Office of the Attorney General
302 W. Washington St., IGCS-5th Floor
Indianapolis, IN 46204

B. Notice to Contractor shall be sent to:

James Joven
6225 Vancouver Court
Indianapolis, IN 46236

16. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, finance charges, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

17. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

18. Taxes. The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Agreement.

19. Termination. This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the Contractor of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

20. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

21. Binding Authority; Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, he has been duly authorized to execute this Agreement on behalf of the entity designated below, and that he has not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, the Contractor and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

James Joven

By: [Signature]
Atty #: 16761-53

Date: 2/13/2006

Approved by
DEPARTMENT OF ADMINISTRATION

By: Earl Goode (for)
Earl Goode, Commissioner

Date: 2-16-06

Approved As To Form And Legality:

By: Elizabeth A. Brown (for)
Stephen Carter, Attorney General

Date: 2-22-06

Office of the Attorney General

By: [Signature]
Printed Name: Gregory F. Zaeller

Title: Chief Deputy

Date: 2-13-06

Approved by
STATE BUDGET AGENCY

By: Zachary J. [Signature] (for)
Charles Schalliol, Director

Date: 2/17/2006

Exhibit A

The Office of the Governor, together with the Office of the Attorney General and the Indiana Department of Environmental Management, are exploring ways to improve the legal services the State of Indiana renders in implementing and enforcing the State's environmental laws. This is part of a government-wide assessment that is being undertaken to improve coordination and efficiency in the provision of legal services in State government. As part of that exploration, the Governor's Office will be undertaking an assessment of the operations and structure of IDEM's Office of Legal Counsel and OAG's Environmental Section to assist in reorganization and consolidation of environmental legal services within the Office of the Attorney General.

The Contractor shall perform the following duties with respect to the Office of Legal Counsel (OLC) of the Indiana Department of Environmental Management and the Office of the Attorney General (OAG):

- Review any OLC and OAG assessment materials generated to date
- Examine organizational chart/staffing of OLC and OAG; assess and recommend changes necessary to take advantage of efficiencies
- Determine job descriptions of OLC and OAG staff; assessment will include interviews of OLC and OAG staff, examination of work assignments, work completed
- Determine existing case loads of OLC and OAG staff; recommend appropriate staffing level for case loads
- Determine completed case work of OLC and OAG staff
- Examine/determine operational systems of OLC and OAG – intake of cases, assignment, accountability measures
- Determine statutory/regulatory responsibilities of OLC and OAG staff; examine mission, values, plan for fulfilling responsibilities; establish protocols/refine existing protocols for fulfilling responsibilities; establish performance standards, if necessary
- Examine process/procedures for OLC handling of enforcement matters, regulatory rule making, and any other core OLC functions
- Assess current funding resources and compensation, and provide recommendations concerning future compensation.
- Report periodically to the Governor's Office, OAG and IDEM.
- Provide a final report on the above deliverables and include recommendations for improving the areas examined.